

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Rincon, Puerto Rico)

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MM Docket No. 00-123  
RM-9903

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MEMORANDUM OPINION AND ORDER

Adopted: April 24, 2007

Released: April 27, 2007

By the Commission:

1. The Commission has before it a Petition for Reconsideration filed by Jose J. Arzuaga, Jr., d/b/a Ocean Communications of our earlier *Memorandum Opinion and Order* in this proceeding.<sup>1</sup> International Broadcasting Corporation filed an Opposition to Petition for Reconsideration. We have reviewed our *Memorandum Opinion and Order* as well as the earlier staff *Memorandum Opinion and Order* and find that there are no errors of law or new facts that would warrant reversing our previous *Memorandum Opinion and Order*. Accordingly, we deny the Petition for Reconsideration.

2. In its Petition for Reconsideration, Ocean Communications reargues the claim that the Commission should not have considered the late-filed Comments filed by International Broadcasting Corporation. Those comments demonstrated that the proposed transmitter site is located in the Desecheo National Wildlife Refuge and that Federal approval for that site is unlikely. We previously rejected this argument. The Commission may consider facts which have been untimely raised when it determines that consideration is required in the public interest, such as when such consideration is necessary to fulfill our overriding public interest obligation to ensure the technical viability of an allotment and compliance with our technical requirements.<sup>2</sup> The late-filed Comments in this case were of decisional significance, were served on and not rebutted by Ocean Communications, and therefore were properly considered.<sup>3</sup>

3. Accordingly, IT IS ORDERED, that pursuant to Section 405 of the Communications Act of

<sup>1</sup> *Rincon, Puerto Rico*, 16 FCC Rcd 22886 (2001).

<sup>2</sup> See *Banks, Redmond, Sun River and Corvallis, Oregon*, 19 FCC Rcd 10068, 10073 (2004); see also *Claremore, Locust, Groar and Nowata, Oklahoma, and Barling, Arkansas*, 4 FCC Rcd 2181, 2182 (1989).

<sup>3</sup> See *Rincon, Puerto Rico*, 16 FCC Rcd 8868 (MMB 2001) (staff denial of Ocean Communication's Petition for Reconsideration), and *Rincon, Puerto Rico*, 16 FCC Rcd 22886 (2001) (Commission denial of Ocean Communication's Application for Review).

1934, as amended,' and Section 1.429 of the Commission's rules,<sup>5</sup> the aforementioned Petition for Reconsideration filed by Jose J. Arzuga, Jr. d/b/a Ocean Communications IS DENIED.

4. IT IS FURTHER ORDERED. that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>4</sup> See 47 U.S.C. § 405.

<sup>5</sup> See 47 C.F.R. § 1.429.